TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 26.

EDWARD HODGSON, PLAINTIFF IN ERROR,

vs.

THE STATE OF VERMONT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF VERMONT.

FILED OCTOBER 8, 1894.

(15,700.)

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(15,700.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 177.

EDWARD HODGSON, PLAINTIFF IN ERROR,

vs.

THE STATE OF VERMONT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF VERMONT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 15, 1896.

1 UNITED STATES OF AMERICA, *ss:*

EDWARD HODGSON, Plaintiff in Error,
vs.
STATE OF VERMONT

The President of the United States of America to the honorable the judges of the supreme court of the State of Vermont, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Vermont, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Vermont and Edward Hodgson, of Orwell, in the county of Addison and State of Vermont, in a prosecution by and in the name of said State of Vermont against said Edward Hodgson, respondent, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of
2 a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Edward Hodgson, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this seventh day of May, in the year of our Lord one thousand eight hundred and ninety-four.

[Seal Circuit Court, Vermont District, U. S. A.]

GEO. E. JOHNSON,
Clerk of the Circuit Court of the United States,
District of Vermont.

Allowed by—
JONATHAN ROSS,
Chief Judge of Supreme Court of Vermont.

[Endorsed:] Edward Hodgson, plaintiff in error, *vs.* State of Vermont. Writ of error. Supreme Court of the United States. Hard & Bliss, Burlington, Vermont, attorneys for plaintiff in error. Filed June 7th, 1894. Rufus Wainwright, clerk of the supreme court of Vermont for the county of Addison.

3 STATE OF VERMONT, } *ss.*:
Addison County, }

I, Rufus Wainwright, clerk of the supreme court of the State of Vermont for the county of Addison, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from three to forty-two, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Edward Hodgson, plaintiff in error, against The State of Vermont, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of said court to be hereunto affixed, at Middlebury, in the county of Addison, in the State of Vermont, this 19th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

[Seal Supreme Court, State of Vermont.]

RUFUS WAINWRIGHT,
Clerk of the Supreme Court of Vermont for the County of Addison.

3½ STATE OF VERMONT, } *ss.*:
Addison County, }

At a term of the supreme court held at Middlebury, within and for the county of Addison aforesaid, on the third Tuesday after the fourth Tuesday of January, A. D. 1893.

Present in court: James M. Tyler, Loveland Munson, Henry R. Start, Laforest H. Thompson, assistant judges; Rufus Wainright, clerk; K. W. Merritt, sheriff.

4 STATE OF VERMONT }
vs.
EDWARD HODGSON. }

Be it remembered that in the June term, A. D. 1892, of the county court within and for said county of Addison comes Frank L. Fish, State's attorney within and for said county of Addison, and brings into court now here his information against Edward Hodgson in words and figures following, viz:

5 *Information.*

STATE OF VERMONT, } ss:
County of Addison, }

Addison County Court, at Their June Term, Begun and Holden at Middlebury on the First Tuesday of June, A. D. 1892, within and for the County of Addison.

Be it remembered that Frank L. Fish, State's attorney within and for said county, comes here into open court, in his own proper person, and upon his oath of office gives said court to understand and be informed that Edward Hodgson of Orwell, in the county of Addison and State of Vermont, on the 7th day of June, A. D. 1892, at Orwell, in the county of Addison aforesaid, did at divers times sell, furnish and give away intoxicating liquor, without authority, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

And the said State's attorney, on his oath aforesaid, comes and gives said court further to understand and be informed that the said Edward Hodgson, prior to this time, to wit, at the December term of the county court held at Middlebury in and for the county of Addison, on the first Tuesday of December, A. D. 1891, before and by consideration of said court, was, as appears of record, convicted of selling, furnishing and giving away intoxicating liquor against the law in such case made and provided.

FRANK L. FISH,
State's Attorney.

[Endorsed:] No. 8. State of Vermont *v.* Edward Hodgson. Supreme court, Addison county, February term, 1893. Respondent's exceptions and copy of information. W. H. Bliss, J. M. Slade, att'ys for respondent. No. 5. Tyler, J. 2.

6 And the said respondent, at said term of the county court, in the custody of the sheriff, by virtue of the warrant for his arrest duly issued from said county court, being brought to the bar here in his proper person, together with Robert W. Crammond, as surety, became recognized to the State of Vermont in the sum of five hundred dollars for the appearance of said respondent to answer said information.

And at said term said State's attorney filed specifications in words and figures following, viz:

7 *Specification.*

STATE }
vs.
EDWARD HODGSON. }

In said case the State's attorney, for a specification, specifies and says as follows: That he will rely upon and expect to prove in the

trial of said cause the fact that the respondent within three years before the filing of the information in the said cause, sold, furnished, and gave away intoxicating liquor to the following-named persons, or to some one or more of them, that is to say:

Frank Charlton, George Munger, Erwin Stedman, Fred. Ferdett, Patrick Sullivan, Joseph Fortiner, S. D. Wells, Alonzo Monger, John Carler, Frank Walker, Rollin Young, Dwight Walker, Sidney Reynolds, Charles Walker, M. Cobur, W. H. Walker, William Martin, Frank Stedman, Elec. Godett, James Percial, D. S. Babett, Benjamin French, J. R. Babett, Joseph Chamberlain, Frank Ross, Fred. Chamberlain, S. H. Conkey, Chas. Chamberlain, Chas. Ricard, A. K. Miller, John Reobins, John Conway, Anson Monger, Walter Buck, Thomas Clark, George Buck, Freeman Buck, C. Bissett, Thomas Percial, Robert Crammond, Timothy La Duke, Lewis La Duke, James Crammond, Thomas La Duke, William Gignore, Edward Beckwith, Fred. La Duke, George, Tatro, Fred. Rickard, Edward Godett, Quton Moffett, Edward Walker, William Percial, Levi Hopkins, R. A. Clark, T. Daniels, Frank Stevens, Chas. Chamberlain, Jr., Dan. Rogers, Thomas Dewett, Dennis Sullivan, John Sullivan, Jay Branch, Bert Bishop, John Root, Esaw Morris.

And the undersigned State's attorney states that he has also specified the offences against said respondent, with all the certainty as to the time and person, and he is now able from all the information he has in said cause; and the State's attorney reserves the right to amend these specifications if he shall have further evidence, pursuant to the statute.

And the State's attorney further specifies and relies upon the selling, furnishing and giving away of intoxicating liquor by the respondent within three years before the filing of said information to some person or persons now unknown to the State's attorney, and claims the right to add the names of such persons when ascertained to the specifications and to make such other amendments in these specifications as the law and the discretion of the court may admit.

FRANK L. FISH,
State's Attorney.

Middlebury, Vt., June 24, 1892.

[Endorsed:] Specifications. State *v.* Edward Hodgson. Addison county court, June term, 1892. Filed June 24, 1892. R. Wainwright, clerk.

8 And at said term of court said respondent filed the following motion to quash said information, viz:

"Addison County Court, June Term, 1892.

STATE OF VERMONT
vs.
EDWARD HODGSON.

And now comes the respondent in the above-entitled cause and moves the hon. court that the information in said cause may be

quashed, for the said State's attorney had no lawful authority to make and file such information in said cause.

By his attorney, WM. H. BLISS."

The court overruled said motion and the said respondent excepted.

9 Said respondent, being brought to the bar here in his proper person and being demanded concerning the premises in said information contained, said that he was not guilty thereof, and put himself upon the country for trial.

A jury being impaneled and sworn, upon trial of said cause on their oath said that the respondent was guilty of one offense as of first conviction and was guilty of one offense as of second conviction of the crime charged in said information.

And thereupon said respondent filed his bill of exceptions in words and figures following, viz:

10 Addison County Court, June Term, 1892.

STATE OF VERMONT }
vs.
EDWARD HODGSON. }

Respondent's Exceptions.

State's attorney's information for illegal sale, furnishing and giving away intoxicating liquor, alleging a prior conviction. Plea, not guilty, and trial by jury, Taft, J., presiding. Verdict, guilty of one first offence and one second offence.

Before pleading, the respondent presented and filed a written motion that the information be quashed for that the said State's attorney had no lawful authority to make and file such information in said cause. This motion was overruled by the court, to which ruling the respondent excepted.

On the trial the respondent was improved as a witness in his own behalf and his counsel offered to show by him that at the alleged former conviction at the December term, 1891, of this court, which conviction was had upon respondent's plea of guilty of six first offences, it was agreed between him and the State's attorney that if he would so plead guilty to six first offences, and would thenceforth desist from the illegal sale, furnishing or giving away of intoxicating liquor the State's attorney would not further prosecute him for any offence prior in time to that conviction. This evidence was excluded by the court, to which ruling the respondent excepted.

Exceptions allowed and placed upon the record. Judgment and sentence respited, mittimus stayed, and cause passed to the supreme court.

R. S. TAFT,
Presiding Judge.

11 And thereupon said bill of exceptions was allowed, judgment and sentence respited, mittimus stayed, and the cause was passed to the supreme court.

And said respondent and John Hall, as surety, became recognized to the State of Vermont in the sum of five hundred dollars for the appearance of said respondent to answer in said cause.

And at said term of the supreme court day was given and said cause continued to the general term of said supreme court then next to be held at Montpelier, in the county of Washington, on the — day of October, A. D. 1893.

At said October general term, A. D. 1893, the respondent filed a motion in arrest of judgment in words and figures following, viz:

12 STATE OF VERMONT:

Supreme Court, General Term, 1893.

STATE OF VERMONT }
vs.
EDWARD HODGSON. }

The said Edward Hodgson hereby amends his motion in arrest of judgment, heretofore filed in this court, so as to be and read as follows:

And now, after verdict and before judgment or sentence, comes the said Edward Hodgson and prays that judgment herein may be arrested, and for cause says as follows:

1. The information in this cause is insufficient and void because it is vague, indefinite, multifarious, defective and lacking in substance in the following particulars, viz:

It charges the respondent with a multitude of infamous crimes of three distinct kinds, in a single count, under a defective allegation of only one of each kind.

It charges the respondent in a single count with an indefinite number of infamous crimes of three distinct classes, to wit, selling, furnishing and giving away intoxicating liquor, at divers times, and omits and fails to state, in respect to any one of such alleged crimes, the following matters of substance, namely:

The quantity of intoxicating liquor so alleged to have been sold.

The kind of intoxicating liquor so alleged to have been sold.

The place, in the town of Orwell, where such alleged sales of liquor were made.

The time when such alleged sales of liquor were made.

To what person or persons such alleged sales of liquor were made.

Who owned the liquor so alleged to have been sold.

Who paid for the liquor so alleged to have been sold.

For what consideration, or considerations, such alleged sales of liquor were made.

13 In what capacity the respondent made such alleged sales of liquor—whether as principal, or as clerk, servant or agent of another.

And the same matters in respect to the alleged furnishing and giving away of intoxicating liquor, except those that pertain to the consideration.

2. In this cause, as appears by the record, the said Edward Hodgson, upon his trial, was deprived of his right to be informed of the nature and cause of the accusation against him.

3. Said Edward Hodgson, on his said trial, was also denied, as appears by the record, of his right to a trial by jury according to the course and principles of the common law.

4. Said Edward Hodgson, on said trial, as appears by the record, was convicted of two infamous crimes without due process of law.

5. Said Edward Hodgson, on said trial, was denied by the State the equal protection of the laws.

6. The statutes under which the information in this cause is drawn, being sections 3859 and 3860 of the Revised Laws of Vermont, are unconstitutional and void for the following reasons:

They are repugnant to that part of article 9 of chapter 1 of the constitution of Vermont, which declares: "That every member of society hath a right to be protected in the enjoyment of life, liberty and property."

Also to those parts of article 10 of the same chapter which declares: "That in all prosecutions for criminal offences a person has a right * * * to demand the nature and cause of his accusation; to call for * * * a speedy and public trial by an impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty; nor can any person be justly deprived of his liberty, except by the laws of the land or the judgment of his peers."

Also to article 12 of said chapter, which provides: "That when any issue of fact proper for the cognizance of a jury is joined, the parties have a right to a trial by jury which ought to be held sacred."

Also to section 6 of chapter 2 of said constitution, which ordains that: "The legislative, executive and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other."

Also to that part of section 9 of chapter 2 of said constitution, which provides that the General Assembly "shall have no power to add to, alter, abolish or infringe any part of this constitution."

13½ 7. Act No. 42, of the Acts of the General Assembly of Vermont of 1888, is repugnant to that part of section 32, of chapter 2, of said constitution, which provides that "all fines shall be proportioned to the offences."

8. Said act No. 42, of the Acts of the General Assembly of Vermont of 1888, is repugnant to that part of article 8 of the amendments to the Constitution of the United States, which provides that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

9. Said sections 3859 and 3860, of the Revised Laws of Vermont, are repugnant to that part of article 6 to the amendments to the Constitution of the United States, which provides that: "In all

criminal prosecutions the accused shall enjoy the right to be informed of the nature and cause of the accusation."

Also to that part of article 5 of said amendments, which provides: "That no person shall be deprived of life, liberty or property without due process of law."

Also to article 8 of said amendments, which provides that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Also to that part of article 14 of said amendments which provides that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person the equal protection of the laws."

EDWARD HODGSON,
By his attorney, WM. H. BLISS.

[Endorsed:] Respondent's amended motion in arrest of judgment. State of Vermont *v.* Edward Hodgson. Supreme court, general term, 1893. W. H. Bliss, respondent's attorney.

14 Said respondent being in said supreme court and said cause having been heard, day was given, and at the January general term of said supreme court, A. D. 1894, it was considered and adjudged that the respondent take nothing by his exceptions, and that his motion in arrest of judgment is overruled.

Jonathan Ross, chief judge, read the following opinion, viz:

15 Supreme Court, General Term, 1893.

STATE
vs.
EDWARD HODGSON.

The opinion of the court was delivered by Ross, *C. J.:*

The motion to quash was properly denied. Whether addressed to the discretion of the court and not revisable in this court or otherwise, the ground of the motion was that the State's attorney had no authority to proceed by information. That ground is not insisted upon now. While held to be addressed to the discretion of the trial court and not revisable in this court because it cannot be pleaded as a matter of right, in State *vs.* Stewart, 59 Vt., 273; in State *vs.* Keyes, 8 Vt., 57; State *vs.* Davies, 52 Vt., 376, and State *vs.* Meader, 62 Vt., 458, in which whether the entertainment of such motions is discretionary with the trial court was not raised nor considered, the denial of such motions by the trial court was considered and passed upon in this court. In the case last named the judgment of the trial court on such a motion was reversed and the complaint was adjudged insufficient and quashed. But if the question presented by such motion can be entertained in this court it can be enter-

tained only upon the ground raised by the motion and passed upon by the trial court. Error in the action of the trial court must distinctly appear. The party cannot be allowed to urge one ground for sustaining a motion in that court and then in this court set up a new ground for sustaining it—a ground not considered nor passed upon by the trial court. The respondent's counsel contends that by using in the motion the words "such information" he thereby raised the question of the sufficiency of the information. But that is not the ordinary and natural construction to be placed upon the language of the motion. If he really intended to raise the question of the insufficiency of the information we should have expected he would have pointed out wherein he claimed it was insufficient. He should have done so to have raised that question. It is not for the trial court to hunt for some concealed rather than clearly defined reason for entertaining the motion. For this court to revise the action of the trial court on such motion, as we think it might if it was shown that the trial court entertained it and passed upon its sufficiency as a matter of law, the grounds for the motion as well as the action of the trial court should be clearly and fully set
16 forth. Otherwise this court will assume that the trial court denied the motion as a matter of discretion.

II. The county court properly excluded the offered testimony of the respondent with reference to his agreement with the State's attorney in regard to what offences should be covered or merged in his former conviction. The statute is specific, R. L., 3505, that "unless the respondent, at the time of pleading guilty, specifies some other days on which such offences were committed, in which case an entry thereof shall be made upon such complaint, indictment, or information, and become a part of the record," the offences to which he pleads "shall be held to have been committed on the days specially set forth in such complaint, indictment, or information." The offered testimony would contradict the record of the former conviction. This is not allowable. State *vs.* Haynes, 35 Vt., 565. The record imports verity of the facts stated. If the information as drawn did not truly describe the offences to which he desired to plead guilty the statute gave him an opportunity to have it amended so that it would. The exceptions are not sustained, and the respondent takes nothing thereby. The county court respited judgment and sentence. The case stands now for judgment and sentence in this court. R. L., 1700.

III. But the respondent has filed in this court an elaborate motion in arrest of judgment. While such motions are usually allowed to be filed any time before final judgment, as they present the question whether upon the record legal judgment and sentence can be passed, yet, under our system of passing criminal causes from the trial court to this court, it is apparent that it was contemplated that this court should sit only as a court of error in such cases. R. L., 1699, the only statute on the subject, reads: "Questions of law decided by the county court, arising upon demurrer or trial by jury, or upon motion in arrest, in a prosecution by indictment or information for a crime or misdemeanor, shall, after verdict of guilty is

returned, upon motion of the respondent, be allowed and placed upon the record, and the same shall thereupon pass to the supreme court for final decision." Then R. L., 1700, is: "If upon the inspection of the record in a cause where judgment, sentence, and execution have been respited and stayed, the supreme court is of the opinion that judgment ought to be rendered upon the verdict, it shall render judgment and sentence thereon, and cause execution thereof to be done." From these provisions of the statute we think that a motion in arrest of judgment and sentence cannot properly be filed in this court; that such motion should be filed in and be passed upon by the trial court, and come to this court as matters of error. We might properly dispose of this motion on this ground. * * *

17 But the character of the motion is so far-reaching that this court would, on proper application, remand the cause to the trial court to allow the respondent to file his motion and have it passed upon there. Such being the case, and inasmuch as the questions arising on the motion have been fully argued and considered, we have concluded to pass upon the sufficiency of the motion, as though it had come regularly before this court. Such motions are somewhat limited in their operation. They do not always reach all defects which would be reached by a general demurrer. They are confined to the record. A general demurrer reaches every material defect in substance. After verdict every reasonable intendment is made in support of the verdict, if there is nothing on the record to prevent it. 1 Chitty, Pl., 673, note 1. It is said there: "The general principle upon which it depends appears to be that where there is any defect, imperfection, or omission in any pleading, whether in substance or form, which would have been a fatal objection upon demurrer, yet, if the issue joined be such as necessarily required on the trial proof of facts so defectively or imperfectly stated or omitted, and without which it is not to be presumed that either the judge would direct the jury to give or the jury would have given the verdict, such defect, imperfection, or omission is cured by the verdict—that is, the court will, after a verdict, presume or intend that the particular thing which appears to be defectively or imperfectly stated or omitted in the pleading was proved at the trial, and such intendment must arise not merely from the verdict, but from the united effect of the verdict and the issue upon which such verdict was given." But where no ground of complaint or action is set out, the complaint, indictment, information, or declaration will not be aided by verdict. This subject has been frequently before this court, and has been fully elaborated, elucidated, and approved. Harding *vs.* Cragie, 8 Vt., 501; Morey *vs.* Harmon, 10 Vt., 565; Manwell *vs.* Manwell, 14 Vt., 14; Needham *vs.* McAuley, 13 Vt., 68; Clossom *vs.* Staples, 42 Vt., 226, and recently State *vs.* Freeman, 63 Vt., 496; Noyes, French and Fickett *vs.* Parker, 64 Vt., 379.

Keeping these limitations of the scope of the motion in arrest in mind, we will consider the elaborate objections and contentions of the respondent's counsel. We quite agree with his con-

tention that, with respect to the substantial allegations to be contained in the pleadings, this class of crimes is no exception to those required in charging the highest crimes. As said by this court in State *vs.* Davis, 52 Vt., 376: "This class of cases is no exception to the generality of criminal cases;" and in State *vs.* Haley, 52 Vt., 476: * * * "This class of statutory crimes stands for the same consideration and is subject to the same rules of law as any other crime." Under this rule
18 we need not consider whether the crimes charged and of which the respondent was found guilty are infamous under the laws, and the decision of the United States Supreme Court cited by the respondent. That court and all other courts of final resort, so far as we are aware, have classed offences against the various laws of the State regulating or prohibiting, unless in excepted cases for specified purposes, the sale of intoxicating liquors as misdemeanors within the police power of the various States to regulate, restrain, and punish, as the statutes of the several States might provide, unless such statutes invaded some constitutional right secured to the accused. While it is difficult to define and limit in exact terms the police power of the State, it is generally held to extend to all regulations affecting the health, good order, morals, peace, and safety of society—Butler *vs.* Chambers (36 Min., 69) and note 1 Am. St. R., 141; Thorpe *vs.* R. & B. R. R. Co. (27 Vt., 140), 62 Am. Dec. (and note), 625; Slaughter-house cases, 16 Wal., 62; Mugler *vs.* Kansas (123 U. S.), 31 L. C., 205; People *vs.* Wagner (86 Mich., 594), 24 Am. St. R., 141—and to include the right to regulate and control the manufacture and sale of intoxicating liquors. Article 5th of the bill of rights of this State expressly reserves to the legislature the right to regulate this power. It reads: "That the people of this State by their legal representatives have the sole, inherent, and exclusive right of governing and regulating the internal police of the same." But in exercising this right the legislature cannot deprive a citizen of an essential right secured by the bill of rights or Constitution, such as depriving him of the right to be tried by a common-law jury. State *vs.* Peterson, 41 Vt., 504. It is further contended that the law under consideration cannot be a police regulation because it requires the court on conviction for a second offence to imprison the convict not less than a month and not more than a year. The statute of Kansas under consideration in Mugler *vs.* Kansas, *supra*, gave the court power to fine or imprison on either the first, second, or subsequent conviction, limiting the time on the first conviction from twenty to ninety days, on the second conviction from sixty days to six months, and on every subsequent conviction from three months to one year. * * * The fines that could be imposed varied from $100 to $1,000. Yet this was held by the Supreme Court of the United States to be a police regulation. Formerly under this law in this State the imprisonment was in the county jail. When only a fine was imposed the convict was committed to the county jail to remain until the fine was paid. In the course of time the house of correction was established to take the place of the county jails as a place of imprisonment, both as

being better equipped for the confinement of the prisoner
19 humanely and as affording him an opportunity to work out his fine. This is within the letter and spirit of chapter 2, sec. 37, of the constitution. If his offences are numerous so that his fine is large, still his imprisonment may be avoided by payment, and, if he does not pay it, the term of imprisonment is limited, whereas, under imprisonment in the county jail, there was no discharge except by payment; hence whether the imprisonment is in the house of correction or in the county jail does not affect the law as a police regulation. The statute complained of provides, R. L., 3802, "If a person by himself, clerk, servant, or agent sells, furnishes, or gives away, or owns, keeps, or possesses with intent to sell, furnish, or give away intoxicating liquor or cider in violation of law he shall forfeit for each offence to the State upon the first conviction not less than five nor more than one hundred dollars, and may also be imprisoned, in the discretion of the court, not more than thirty days; upon the second and each subsequent conviction not less than ten nor more than two hundred dollars for each offence, and shall also be imprisoned not less than one month nor more than one year." R. L., 3803, provides that prosecutions may be had before the county court or a justice of the peace on complaint of the grand juror or information of the State's attorney. R. L., 3859, prescribes the form of a complaint or information, the essential part of which is "that —— ——, of ——, on the — day of ——, A. D. —, at ——, did, at divers times, sell, furnish, or give away (as the case may be) intoxicating liquor without authority, contrary to the form of the statute," &c. R. L., 3860: "Under the foregoing complaint every distinct act of selling, furnishing, or giving away may be proved and the court shall impose a fine for each offence." When this form of complaint or information was first prescribed, some prosecuting officers drew the information with a hundred or more counts for selling, as many for furnishing, and as many for giving away. This only enhanced the costs, and the court held that it was unnecessary; that the separate counts furnished the respondent no additional information, except the days on which the offences were charged were named, but held that under this complaint the respondent was entitled to a specification or bill of particulars setting forth, as well as the prosecuting officer was able, the claimed offences for which he should ask a conviction on the trial.

State *vs.* Conlin, 27 Vt., 323.
State *vs.* Bacon, 41 Vt., 532.
State *vs.* Davis, 52 Vt., 376.
State *vs.* Freeman, 27 Vt., 525.
State *vs.* Rowe, 43 Vt., 267.
State *vs.* Wooley, 59 Vt., 357.

In 1858 the legislature provided that but one court should be required or allowed for in the taxation of costs. The court also held that the State must be confined on the trial to the offences specified—State *vs.* Rowe, *supra*—but that the court had the power

when it would work no disadvantage to the respondent to allow the specifications to be amended.

20 Under these conditions the trials of these causes have gone on for nearly forty years without special complaint, inconvenience, or hardship, certainly none which has successfully appealed to the legislature for modification. In administering the law this court held that every traversable fact must be alleged, with time and place, and without such allegation the information was bad. State *vs.* Kennedy, 36 Vt., 563; State *vs.* O'Keefe, 41 Vt., 691. It was also held that if the words "at divers times" were omitted but one offence could be shown. State *vs.* Jones, 39 Vt., 370. Also that the court prescribed was not bad for duplicity. State *vs.* Bacon, 36 Vt., 560. It is now contended that these decisions are erroneous that the prescribed form is in the disjunctive and authorizes the charging of but one class of offences, either a sale, a furnishing, or a giving away. This contention assumes that a sale of intoxicating liquors under the statute is a different offence from furnishing it or giving it away, but this is not true. The thing prohibited consists in providing intoxicating liquor contrary to law. It may be done in any of the three ways specified. A sale, a furnishing, a giving away of intoxicating liquor, each is the prohibited provision of it aimed to be suppressed by the stutute. The quality and magnitude of the offence is the same, the penalty and mode of enforcement the same, in whichever of the three ways it is committed.

The form of the prescribed complaint that the accused "did sell, furnish, or give away," &c., indicates that with the words "at divers times" omitted but one offence against the statute, committed in one of the ways specified, disjunctively, was intended to be charged, as held in State *vs.* Jones, *supra;* but every transaction violating this law comes within one of these terms. The prosecutor is confined to a single count. He must frame it to meet the varying phases of his proof. Without the words "at divers times" it charges but one offence, whether the complaint charges the sale, furnishing, and giving away conjunctively or disjunctively; if a sale is shown, the other words are surplusage, and *vice versa.* With the words "at divers times" added it gives notice that more than one or many offences may be claimed to be shown at the time and place specified. It is not unlike the common count in assumpsit for goods sold and delivered; single, but many different sales may be shown under it; but if double, duplicity is not reached by a motion in arrest of judgment. The respondent availed himself of his right to specifications, and they were furnished. The offences, whether by a sale, furnishing, or giving away, are of the same degree, and whether for first or second conviction require the same or a similar plea, the same or a similar verdict, and are similarly punished. The fact that they are included in one count does not invade any constitutional or other right more than if they were in separate counts. "In criminal proceedings the joinder of different offences of the same degree

21 in an indictment does not render the proceedings defective, though it is a matter of discretion in the court on

motion to quash an indictment so framed." 1 Chitty Pl., 201; The King *vs.* Kingston, 8 East., 41; Young *et al. vs.* The King, 3 D. and E., 98. The last case, an indictment for obtaining goods under false pretenses, against the statute, where the sentence was transportation for seven years, was held to be a misdemeanor, and that the indictment need not meet the requirements of the common law, provided it met those of the statute. The constitution of the State, its provision for a legislature to enact laws, the committal to it of the exclusive right and power to govern and regulate the internal police of the State, as well as the statutes of the State, proceed upon the theory that it has the right and power to change and vary at its pleasure both in criminal and civil matters the methods of procedure so long as it does not invade the fundamental right of the citizen reserved by the constitution. It does not, as some seem to think, tie up the legislature to follow common-law methods of procedure even in criminal cases, but it may be helpful to ascertain what the common law required. It has no different rule as to the definiteness of pleadings in criminal than in civil matters. Says Mr. Chitty, 1 Chitty Pl., 213: "The observations of Lord Chief Justice De Grey on the structure of an indictment are very forcible and equally applicable to the pleadings in civil actions: 'The charge must contain such a description of the injury or crime that the defendant may know what injury or crime it is which he is called upon to answer, that the jury may appear to be warranted in their conclusion of guilty or not guilty upon the premises delivered to them, and that the court may see such a definite injury or crime that they may apply the remedy or the punishment which the law prescribes. The certainty essential to the charge consists of two parts, the matter to be charged and the manner of charging it.' This extract is taken from the learned judge's opinion, delivered in the House of Lords, in Rex. *vs.* Horne, Cowper, 672. It is a celebrated case, which grew out of our revolution, was carefully tried and thoroughly considered both in the trial court by Lord Mansfield and in the House of Lords. The learned judge further says: 'As to the matter to be charged, whatever circumstances are necessary to constitute the crime imputed must be set out, and all beyond are surplusage." * * * "Secondly, as to the manner of making the averment, there are cases where a direct and positive averment is necessary to be made in specific terms, as where the law has affixed and appropriated technical terms to describe a crime, as in murder, burglary, and others. It is likewise true that in all cases those facts which are descriptive of the crime must be introduced upon the record by averments in opposition to argument and inference.'"

Applying these clearly expressed rules to the case at bar, the offence created by the statute is the provision of intoxicating liquors
22 without the authority of law, either by sale, furnishing, or giving away. There are no circumstances necessary to be set out to constitute either of these facts an offence. The terms of the statute as clearly import the prohibited offence as any terms can. The offence is neither heightened nor lessened by nor dependent upon

the kind or amount of intoxicating liquors sold, nor upon the person to whom the sale, furnishing, or giving away is made, nor upon the amount of money received, nor upon whether made by the respondent or by some one for him. None of these particulars need be set forth to notify the respondent of the offence with which he is charged and called upon to answer, nor to apprise the jury of what they are to convict or acquit him, nor to apprise the court of the sentence which it should impose. The prescribed form covers the offence in the exact and easily understood language of the statute which creates it. This is sufficient. State *vs.* Daley, 41 Vt., 654; State *vs.* Cook, 38 Vt., 437; State *vs.* Jones, 33 Vt., 443; State *vs.* Matthews, 42 Vt., 542; State *vs.* Clark, 44 Vt., 636; State *vs.* Benjamin, 49 Vt., 101; State *vs.* Higgins, 53 Vt., 198; State *vs.* Miller, 60 Vt., 90; State *vs.* Campbell, and note 94, Am. Dec., 251. In Bishop's Cr. Pro., 614, the author says: "The allegations must cover so many of the statutory terms as will show a *prima facie* violation of the written laws and need cover no more." It is not an ancient crime which has been from time immemorial clothed in special terms which by long use have become the most apt and definite ones to describe the exact crime. The statute sometimes prescribes the punishment of a common-law crime without defining it or creates an offence and prescribe no form for an information. In such cases it is well held that the common-law requirements in charging it must be met. By statute enacted in 1787 and continued since that time, R. L., 689, the common law when applicable to the local situation and circumstances and not repugnant to the constitution or laws has been the law in this State, but not otherwise; but by this statute the common law is not in force in charging a statutory crime created in clear, definite terms with a prescribed form for charging it in the terms of the statute. It is sufficient in such a case to follow the prescribed form. The respondent contends that the prescribed form is defective, in that it does not require the names of the persons to whom sales are claimed to have been made to be set forth; that sales must be made to some peason; but this contention is based on the requirements of the common law when applicable. The specification ordinarily would, and did in this case, supply the information. Some courts have maintained this contention in regard to the statutes which they had under consideration. Whether the operation of the common law was limited in those States as it is in this does not appear; but the decision of courts of final resort are nearly evenly divided on this subject. This court has held that the names of the persons need not be set forth. State *vs.* Munger,
23 15 Vt., 290; Bishop on Cr. Pro., § 1037 and note. The author there says: "On both sides they seem supported by a considerable weight of reasoning." * * * "Undoubtedly identification may be made sufficiently clear to satisfy the demands of legal principle without the name." Without doubt the difference in the decisions is controlled to some degree at least by the difference in the language of the statutes creating the offence. It is also contended that the particulars of the kind of liquors, price, and name of the person to whom sold should be set forth in the infor-

mation both to apprise the respondent of the evidence he has to meet and to have the record protect him from a second conviction for the same offence. It is never necessary for the State to disclose what is merely its proof of the commission of the offence charged in the information. If the record does not itself identify the offence or offences for which conviction has been had on the trial of a subsequent prosecution, such identification may be made by parole testimony. If these particulars were set out in the information, resort might have to be had to parole proof to identify the offence for which conviction was had. It might occur that the same respondent made more than one sale of the same kind and quantity of liquor to the same person, at the same price, at the same place, and on the same day. By the common law it has always been held that the prosecutor need not set forth the name of the person when unknown. It is sufficient to state that his name is unknown. These particulars of the kind, quantity, price, and person to whom sold are seldom known to the prosecutor until revealed by the witness upon the stand. Without these particulars the prescribed form answers every essential requirement of the common law in regard to informations or indictments. The prescribed form sets forth in clear language, easily to be understood, "the cause and nature of the accusation." It meets fully the 10th article of the bill of rights in this respect. By the use of the words "at divers times" on the day named it notifies him that he may be called upon to meet more than one offence committed in one of the ways named. The prosecution is never confined to prove the offence on the day specified in the information if the proof is within the time limited for the prosecution of the offence. The accused can of right call upon the prosecutor to specify more fully what is claimed to be included under these general terms. This is analogous to the common counts in assumpsit, in civil cases, which grew up under the common law. The defendant in a civil case is entitled to notice of what he is called upon to meet as much as a respondent in a criminal case and for the same reasons. Under these common counts it has always been held that the plaintiff might show any number of claims of the class described, and for this reason, that the defendant was entitled, as a matter of right, to a bill of particulars or specifications, and that such specifications supplied
24 what was lacking by the generality of the count in regard to the particulars and number of similar claims which the plaintiff would call upon the defendant to litigate. In this view the information, aided by specifications, is good by the rules of the common law; but, whether it be or not, the legislature has an undoubted right to change and mould the forms of procedure so long as it does not deprive the accused of any constitutional right. It has not done so in the case at bar. Further, on a motion in arrest of judgment, the information and verdict which constitute the record, aided by the presumptive intendments, are ample to uphold a judgment and sentence. The respondent's counsel further contends that the legislature, in other parts of this law not brought under consideration by his motion, by enacting that this

class of cases shall stand for trial the first term, that a continuance shall not be allowed without cause shown, and that a *nolle prosequi* or discontinuance shall not be entered without cause and only with the consent of the court, has invaded the province of the court, so that the respondent under them does not have a common-law jury trial, and for that reason the whole law is unconstitutional. We do not understand that any of these provisions trench upon the province of the court. The legislature is to establish courts and define their jurisdiction and powers in accordance with the constitution. All cases, unless under some rule of court which the legislature has, either expressly or impliedly, authorized the court to make, stand for trial the first term of court and cannot be continued or discontinued without the permission of the court. No absolute nor discretionary power of the court is taken away by these provisions. This class of cases is not exceptional in its manner of trial. They are proceeded with like all other cases. The selection and empanneling of the jury, the rules of evidence, burden of proof, and procedure in the trial is the same as in all other criminal cases. What has been said in regard to the scope of the information, aided by specifications to which the respondent was entitled as a matter of right and which were furnished to him, and in regard to the order and manner of his trial makes the respondent's trial a trial by "due process of law" or "in accordance with the law of the land" within the varying definitions of these general terms as claimed by the respondent's counsel. He was notified in clear and unmistakable language of the offence with which he was charged. He heard the evidence by which it was sought to be established, was given ample opportunity to meet it by counter-evidence, and was given an impartial jury to determine whether the charges were established beyond a reasonable doubt. All of the many contentions, objections, and criticisms of the respondent upon this point concentrate, first, upon whether the information, aided by the specifications, sufficiently informed him of the "cause and nature of his accusation," and, secondly, whether, in enacting the law, the legislature invaded and took from the trial court some of its essential constitutional p-erogatives, both of which have been considered. We need not stop to apply what has been said to each contention in detail.

IV. He further contends that the statute is unconstitutional because it authorizes the requirement of excessive bail, the imposition of fines excessive and disproportionate to the offence alleged, and the infliction of cruel and unusual punishment. The only punishment authorized is fines and imprisonment in the house of correction. The largest time of imprisonment proper for a second conviction is one year, and for failure to pay the fine imposed, however large and for howsoever many offences, could not exceed three years. No. 78, Acts of 1892. This State has no constitutional provision rendering a punishment by fine and imprisonment at hard labor unusual and cruel. Sec. 37, chapter II, of the constitution of the State is: "To deter more effectually from the commission of crimes by continual visible punishments of long duration and to make sanguinary

punishments less necessary, mean sought to be provided for punishing by hard labor those who shall be convicted of crimes not capital, whereby the criminal shall be employed for the benefit of the public or for the reparation of injuries done to private persons," and this is its only provision in relation to such punishments. The statutory provisions in regard to the punishment of this class of offences is in line with the State constitution. It is claimed that the 8th amendment of the Constitution of the United States is applicable, and that the punishment is cruel and unusual under that. That article has been so far held to be applicable only to punishments under the laws of the United States. Barron *vs.* Baltimore, 7 Pet., 243; Pervear *vs.* Massachusetts, 5 Wall., 475; O'Neil *vs.* State of Vermont, 144 U. S., 323. In the case last named Justice Blatchford, in the opinion of the court, says: "Moreover, as a Federal question, it has always been ruled that the 8th amendment to the Constitution does not apply to States." Justice Field, in a dissenting opinion, holds that the 14th amendment has made the 8th amendment applicable to the States, but such is not the holding of the court in that case. In this case the longest term of imprisonment proper could not exceed one year and the greatest fine could not exceed three hundred dollars, and on failure to pay the fine the imprisonment could not exceed three years. In the O'Neil case the imprisonment proper was one month, but the number of offences was so great that the fine amounted to a large sum, and if unpaid the imprisonment would be over fifty-four years for him to work out the fine in the house of correction. It was only the aggregation of imprisonment that Justice Field complained of as cruel and unusual. *Non constat* that he would regard the extreme limit of punishment in this case as cruel and unusual. Considering
26 the magnitude of the evil sought to be restrained, the fact that the only motive for committing the offence is cupidity or desire of pecuniary gain to be acquired by taking advantage of the weakness of fellow-citizens weighed down if not overborne by pernicious habit, we do not think the punishment cruel or unusual. The punishment is graded and made to depend upon whether the conviction is the first or second. It is of such a nature as tends to take away the inducement to the crime. It is not unreasonable in the length of imprisonment nor amount of fine that can be imposed for a single offence.

V. It is further contended that the statutes under consideration are *are* repugnant to this clause in the 14th amendment to the Constitution of the United States: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person the equal protection of the laws." This in terms applies to the States. No claim is made nor can be made that these statutes apply to one class of citizens of this State or of the United States more than to all. Whoever of whatever class commits the prohibited acts within the State is an offender, subject to prescribed penalties. We have already considered whether any person was or

could be "deprived of life, liberty, or property without due process of law." What is due process of law is considered at length, and the common law and State decisions and the prior decisions of the United States Supreme Court brought together and reviewed in Hurtado *vs.* California, 110 U. S., 499. The result there reached is summarized by the court in its opinion in Leeper *vs.* Texas, 139 U. S., 462, as follows: "That by the fourteenth amendment the powers of States in dealing with crimes within their borders are not limited except that no State can deprive a particular person or classes of persons of equal and impartial justice under the law; that law in its regular course of administration through courts of justice is due process, and when secured by the law of the State the constitutional requirement is satisfied, and that due process is so secured by laws operating on all alike and not subjecting the individual to the arbitrary exercise of the powers of Government unrestrained by the established principles of private right and distributive justice." To like import is Fong Yue Ting *vs.* United States, 149 U. S., 698. In this case it was held that Congress might change the burden of proof and prescribe the testimony required to remove it. The respondent concedes, as in reason he must, that the privileges and immunities of citizens of the United States which the States are prohibited from making or enforcing any law to abridge are
27 the two classes which have already been considered.

Judgment that respondent takes nothing by his exceptions, and that his motion in arrest of judgment is overruled.

I hereby certify that the foregoing 13 pages is a correct copy of the original opinion in the case State *vs.* Hodgson, read March 1, 1894, at the January general term of the supreme court.

March 20, 1894.

JONATHAN ROSS,
Judge of Supreme Court.

28 Whereupon the respondent was sentenced to be confined to hard labor in the house of correction, at Rutland, in the county of Rutland, for the term of 60 days, and to pay to the treasurer of the State of Vermont a fine of $30.00 for the first offense and a fine of $70.00 for the second offense, aggregating $100.00, and to pay the costs of prosecution, taxed at the sum of $197.36, with alternative sentence, as the law directs.

Upon suggestion by the respondent that he desire to pray out a writ of error to the United States Supreme Court, mittimus was stayed until the — day of May, 1894.

Whereupon, upon the 24th day of May, A. D. 1894, being a day in the May general term, A. D. 1894, of said supreme court, the respondent filed his petition for a writ of error to the United States Supreme Court and his assignment of errors in words and figures following, viz:

29 EDWARD HODGSON, Plaintiff in Error,
vs.
THE STATE OF VERMONT.

To the honorable the Supreme Court of the United States or to the supreme court of the State of Vermont:

The petition of Edward Hodgson, of Orwell, in the county of Addison and State of Vermont, respectfully shows to this honorable court as follows:

I.

Your petitioner, at and during the term of the county court of the State of Vermont begun and holden at Middlebury, within and for said county of Addison, on the first Tuesday of June, A. D. 1892, was residing in Orwell, in said county of Addison, and then was and ever since has been and still is a citizen of the United States; that at said term an information was filed in said county court against your petitioner signed by Frank L. Fish, State's attorney in and for said county of Addison, which said information was in the words and figures following, viz:

(Information as above stated.)

30 II.

That a warrant issued at said term out of and by authority of said county court against your petitioner, upon which said warrant your petitioner was apprehended and brought before said county court and there held to answer to said information.

That your petitioner afterwards and before trial applied for specifications of the several crimes or offences in said information charged against him or pretended so to be, and a certain written paper purporting to be such specifications or specification was, before trial, furnished him by said State's attorney; which said paper was in the words and figures following, viz:

(Specifications as above stated.)

31 III.

That the further proceedings in said county court are set forth in a certain bill of exceptions after trial and at the same term allowed by Hon. Russell S. Taft, presiding judge of said county court; which said bill of exceptions was in the words and figures following, viz:

(Exceptions as above stated.)

32 IV.

That pursuant to the order in said bill of exceptions contained said cause passed to the supreme court of the State of Vermont and became and was in order for trial at the term of said supreme court begun and holden at said Middlebury, within and for said county of Addison, on the — day of February, A. D. 1893, at which said February term said cause, by order of said supreme court, was con-

tinued to the general term of said supreme court, to be holden at Montpelier, in the county of Washington and State of Vermont, on the — day of October, A. D. 1893; that at said last-named term, and before hearing in said cause, your petitioner filed in said supreme court his motion in arrest of judgment; which said motion was in the words and figures following, viz:

(Motion in arrest as above stated.)

33 V.

That thereafterwards, at the same term, said cause came on to be heard by and before said supreme court of the State of Vermont and was argued by counsel; and thereafterwards, to wit, at the next general term of said supreme court of the State of Vermont, to wit, at said Montpelier, on the first day of March, A. D. 1894, the said case was decided by said supreme court against your petitioner, the opinion of the court deciding said case being delivered by Hon. Jonathan Ross, chief judge of the supreme court of the State of Vermont; which said opinion was in the words and figures following—that is to say:

(Opinion of Ross, C. J., as above stated.)

34 VI.

That thereafterwards, on the second day of March, A. D. 1894, at said Montpelier, your petitioner was sentenced by said supreme court of the State of Vermont in said case to pay a fine and to be imprisoned at hard labor to the amounts and for the times in said sentence set forth; a certified copy of which said sentence is hereto annexed in the words and figures following—that is to say:

(Sentence as above stated.)

And that the alternative sentence in said sentence mentioned is under section 4366 of the Revised Laws of Vermont, and is a further or alternative sentence if the sentence in respect to payment of fine and costs be not complied with within twenty-four hours the respondent, your petitioner, shall be imprisoned at hard labor in said house of correction for as many days as thrice the number of dollars to be paid by the original sentence, including the costs of commitment.

35 VII.

And your petitioner avers that in the decision of said cause and in the said judgment and sentence therein against your petitioner by said supreme court of the State of Vermont the validity of the following-recited statutes of said State of Vermont was drawn in question by your petitioner, on the ground of their being repugnant to the Constitution of the United States, and the said decision was in favor of their validity; which said statutes are—

Sections 3802, 3803, 3859, and 3860 of the Revised Laws of Vermont and No. 42 of the acts of 1888.

36 VIII.

And your petitioner further avers that there was manifest error in said proceedings and in said decision, judgment, and sentence of said supreme court of the State of Vermont in favor of said State of Vermont and against your petitioner that is revisable and ought to be revised and corrected by this honorable court, and your petitioner avers that said supreme court of the State of Vermont erred in the following decisions and proceedings, and he hereby assigns the same for error in this cause—that is to say:

1. In deciding and because said court decided that said sections 3802 and 3803 of the Revised Laws of Vermont, as amended by No. 42 of the acts of the legislature of Vermont of the year 1888, section 3859 and the first part of section 3860 of said Revised Laws above recited, are not, nor are any of them or any part thereof, repugnant to the Constitution of the United States.

2. In deciding and because said court decided that said section 3802 of the Revised Laws of Vermont, as amended by said act No. 42 of the acts of 1888 of the legislature of Vermont and above recited, is not repugnant to that part of article 8 of the amendments to the Constitution of the United States which provides that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

3. In deciding and because said court decided that said sections 3859 and 3860 of the Revised Laws of Vermont are not repugnant to that part of article 6 of the amendments to the Constitution of the United States which provides that: "In all criminal prosecutions the accused shall enjoy the right to be inform- of the nature and cause of the accusation."

4. In deciding and because said court decided that said sections 3859 and 3860 of the Revised Laws of Vermont are not repugnant to that part of article 5 of said amendments to the Constitution of the United States which provides: "That no person shall be deprived of life, liberty, or property without due process of law."

37 5. In deciding and because said court decided that said sections 3859 and 3860 of the Revised Laws of Vermont are not repugnant to that part of article 14 of the amendments to the Constitution of the United States which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person the equal protection of the laws."

6. In deciding and because said court decided that in being forced to trial upon the above-recited information and so-called specifications, and convicted and sentenced thereon, pursuant to said statutes, no privilege or immunity of your petitioner was abridged.

7. In deciding and because said court decided that said State of Vermont in forcing your petitioner to trial on said information and so-called specifications, and procuring his said conviction and sentence thereon, did not deprive your petitioner of his liberty and property without due course of law.

8. Because in the passing of the aforesaid sentence upon your petitioner an excessive fine was imposed and a cruel and unusual punishment inflicted upon your petitioner by said court.

Wherefore your petitioner prays this honorable court to grant unto him a writ of error, to be issued out of this honorable court, and to be directed to the judges of said supreme court of the State of Vermont, commanding them that they send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the errors aforesaid what of right and according to the laws and customs of the United States should be done.

EDWARD HODGSON,
By his attorney, WM. H. BLISS.

STATE OF VERMONT, *Chittenden County*, } ss:

I, William H. Bliss, of Burlington, in said county of Chittenden, on oath say that I have carefull- read the foregoing petition for writ of error, and that the matters of fact therein stated are true.

WM. H. BLISS.

Subscribed and sworn to, at Burlington, this — day of April, A. D. 1894, before me—

E. R. HARD,
Master in Chancery.

38 And afterwards, on said 24th day of May, A. D. 1894, in accordance with the petition of said respondent, a writ of error to the United States Supreme Court was duly allowed by Jonathan Ross, chief judge of the supreme court of the State of Vermont, ordered to be filed, and was filed June 7, A. D. 1894.

And upon said 24th day of May, A. D. 1894, the respondent filed a bond in error, duly approved by said Chief Judge Jonathan Ross, on the 23d day of May, A. D. 1894, in words and figures following, viz:

"Know all men by these presents that we, Edward Hodgson, of Orwell, in the State of Vermont, as principal, and W. H. Bliss and E. R. Hard, of Burlington, in said State, as sureties, are held and firmly bound unto the State of Vermont in the full and just sum of five hundred dollars, to be paid to the said State of Vermont, its treasurer or its certain attorney or assigns; to which pay-
39 ment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this seventh day of May, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately at a session of the supreme court of said State of Vermont, in a suit depending in said court between said State of

Vermont and said Edward Hodgson, respondent, a judgment was rendered against the said Hodgson, and the said Hodgson having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Vermont, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within — days from the date thereof:

40 Now, the condition of the above obligation is such that if the said Hodgson shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

EDWARD HODGSON. [L. S.]
WM. H. BLISS. [L. S.]
E. R. HARD. [L. S.]"

Sealed and delivered in presence of—
D. J. CROWLEY.

And on the said 24th day of May, A. D. 1894, it was ordered that the mittimus in said cause be stayed until further order of court.

And upon the said 24th day of May, A. D. 1894, a citation was issued by the said Jonathan Ross, chief judge as aforesaid, and the same was returned into court with service by said Frank L.
41 Fish, State's attorney as aforesaid, duly acknowledged under date of May 25, 1894; which citation is hereto attached.

42 UNITED STATES OF AMERICA, *ss:*

To the State of Vermont, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of Vermont, wherein one Edward Hodgson, of Orwell, in the county of Addison and State of Vermont, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Jonathan Ross, chief judge of the supreme court of Vermont, this 23d day of May, in the year of our Lord one thousand eight hundred and ninety-four.

JONATHAN ROSS,
Chief Judge of Supreme Court of Vermont.

43 [Endorsed:] Edward Hodgson, plaintiff in error, *vs.* State of Vermont. Citation. Supreme Court of the United States. Filed June 7th, 1894. Rufus Wainwright, clerk of the supreme court of Vermont for the county of Addison. Hard & Bliss, att'ys for plaintiff in error, Burlington, Vt.

I, Frank L. Fish, State's attorney for the State of Vermont in the county of Addison, hereby acknowledge for said State due and legal service of this citation.

Vergennes, Vt., May 25, 1894.

FRANK L. FISH,
State's Attorney.

44 [Endorsed:] United States Supreme Court. Edward Hodgson, plaintiff in error, *vs.* State of Vermont, defendant in error. Writ of error, record, and citation. Wm. H. Bliss, attorney for plaintiff in error.

Endorsed on cover: Case No. 15,700. Vermont supreme court. Term No., 177. Edward Hodgson, plaintiff in error, *vs.* The State of Vermont. Filed October 8, 1894.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

EDWARD HODGSON, Plaintiff in Error,
against
THE STATE OF VERMONT. } No. 177.

And now the said Edward Hodgson, plaintiff in error, by William H. Bliss, his attorney, comes and, by leave of the court, files the following assignment of errors in the judgment of the supreme court of Vermont against him, set forth in the record in this cause, and which upon the writ of error in this cause is sought to be reversed, in addition to and not waiving the several assignments of error previously contained and set forth in said record; and he avers that the supreme court of Vermont in said judgment erred in the following decisions made and necessarily involved in said judgment, which he states and assigns as errors—that is to say:

1. That the statutes of Vermont under and in pursuance of which the information upon which the plaintiff in error was convicted, as set forth in the record, being sections 3859 and 3860 of the Revised Laws of Vermont, are not in conflict with the provisions of the Constitution of the United States which require that "in all criminal prosecutions the accused shall enjoy the right to be informed of the nature and cause of the accusation," and that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person the equal protection of the law."

2. In deciding that the information under which the plaintiff in error was convicted, as set forth and shown in the record, was sufficient under the said provisions of the Constitution of the United States to found a conviction and judgment upon, and that the plaintiff in error was thereby duly informed of the nature of the accusation against him, and that the said information constituted due process of law, and that in and by said conviction and judgment his privileges and immunities were not abridged nor the equal protection of the *land* denied him within the meaning of the said provisions of the Constitution of the United States.

3. In overruling the motion in arrest of said judgment filed and urged by the plaintiff in error, as stated and set forth in the record, for the reasons and upon the grounds aforesaid, and in affirming the said judgment, conviction, and sentence, whereby rights claimed by the plaintiff in error under the Constitution of the United States and material and necessary to his defence were denied him

by the said supreme court of Vermont and judgment rendered against him in contravention thereof, which is the judgment sought to be reversed upon this writ of error.

EDWARD HODGSON,
By WILLIAM H. BLISS,
His Attorney.

[Endorsed:] United States Supreme Court, October term, 1896. Edward Hodgson, plaintiff in error, against The State of Vermont. Assignment of errors. William H. Bliss, attorney for plaintiff in error; office & P. O. address, Burlington, Vt. 177, #15,700. Nov. 2.

[Endorsed:] Case No. 15,700. Supreme Court U. S., October term, 1896. Term No., 177. Edward Hodgson, pl'ff in error *vs.* The State of Vermont. Assignment of error. Filed Nov'r 2, 1896.